

FAIR EMPLOYMENT & HOUSING COMMISSION

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MINUTES 461ST COMMISSION MEETING

June 6, 2006
Fresno County Free Library
2420 Mariposa Street, Sarah McCardle Room
Fresno, California

PRESENT:

Chairman George Woolverton, Vice-Chair Herschel Rosenthal, Commissioners Patrick Adams, Tamiza Hockenhull and Carol Freeman; and Commission staff Ann Noel, Jo Anne Frankfurt, Caroline Hunt, and Loc D. Tra; Department of Fair Employment and Housing (Department or DFEH) Director Suzanne Ambrose; and members of the public.

Chairman Woolverton called the meeting to order at 10:11 a.m.

OPEN SESSION**REVIEW OF AGENDA**

Chairman Woolverton moved, Commissioner Rosenthal seconded, and the Commission unanimously voted to approve the agenda. [06-15]

REVIEW OF THE MINUTES

Chairman Woolverton moved, Commissioner Rosenthal seconded, and the Commission unanimously voted to approve the Minutes and Transactions of the 460th meeting as submitted. [06-16]

CLOSED SESSION

The Commission entered Closed Session at 10:15 a.m. Only the Chairman, Commissioners, and Commission staff were present.

The Commission discussed hearings and litigation and deliberated on pending cases.

Executive and Legal Affairs Secretary (ELAS) Ann Noel presented cases a) 1-3 and b)

1-5.

a. Writs and Appeals

(1) Albertson's Inc. v. FEHC

A judgment was entered and the parties are now negotiating restitution to the complainant with interest and reinstatement.

(2) Gemini v. FEHC

The Commission's decision was upheld by the Court of Appeal and the Department is enforcing the Commission's order.

(3) DFEH v. FEHC (Marion's Place)

The Department filed a writ of mandate challenging the Commission's final decision. Subsequently, the Department withdrew its writ.

b. Post-Decision

(1) DFEH v. E & O Construction (Harper)

Judgment has now been entered and the Department can now enforce the decision.

(2) DFEH v. Bottoms (Bates)

Judgment has now been entered and the Department can now enforce the decision.

(3) DFEH v. Simi Valley Ford (Darby)

The status of this decision is unknown.

(4) DFEH v. Wal-Mart (Carver) (Wal-Mart II)

This decision became the final decision of the Commission by the passage of time (100 days).

Staff had recommended that the Commission adopt this decision as a non-precedential decision of the Commission.

(5) DFEH v. Capitol Hills Arco AM/PM (Johnson)

This decision became the final decision of the Commission by the passage of time (100 days).

Staff and the Department both recommended that the Commission designate this decision as a precedential decision of the Commission.

Chairman Woolverton moved, Commissioner Rosenthal seconded, and the Commission unanimously voted to make the decision precedential. [06-17]

c. Administrative Adjudication: Pending Decisions

(1) DFEH v. St. Julius Lewis (Maxwell & Johnson)

Chairman Woolverton moved, Commissioner Rosenthal seconded, and the Commission unanimously voted to adopt the decision. [06-18]

(2) DFEH v. CATERON, et al (Benjamin)

Chairman Woolverton moved, Commissioner Adams seconded, and the Commission voted 4:1 to adopt the decision. Commissioner Freeman dissented with regard to the maximum monetary restitution awarded. [06-19]

ELAS Noel and ALJ Hunt left the room at 10:44 a.m.

(3) DFEH v. Stephen Fields (Langille)

Commissioner Adams moved, Chairman Woolverton seconded and the Commission unanimously voted to adopt the proposed decision. [06-20]

ALJ Frankfurt left the room at 10:56 a.m.

ELAS Noel rejoined the room at 10:57 a.m.

(4) DFEH v. Prunty's New Beginnings (Henson/Project Sentinel)

Commissioner Adams moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to adopt the proposed decision. [06-21]

ELAS Noel stated that following cases (5-8) have been heard; however, their proposed decisions have not yet been issued.

(5) DFEH v. Los Angeles Fire Department (Killian)

(6) DFEH v. San Francisco BART (Bartley)

(7) DFEH v. Acapulco Restaurant (Sparacino)

(8) DFEH v. Guardsmark (Sotnikova)

Chairman Woolverton moved, Commissioner Adams seconded, and the Commission unanimously voted to end Closed Session and enter Open Session at 11:08 a.m. [06-22]

OPEN SESSION

COMMISSIONERS' REPORTS

Chairman Woolverton welcomed Commissioners Hockenhull and Freeman. Chairman Woolverton expressed his regret that the scheduled May 16, 2006 meeting was cancelled on May 15, 2006 because of health emergencies of several Commissioners, and their subsequent absences meant that there was no quorum. During his tenure on the Commission, this was the first time that the Commission had to cancel a meeting due to the lack of a quorum. He promised that it would never happen again.

ATTORNEY GENERAL'S REPORT

Deputy Attorney General Louis Verdugo Jr. was not present to give his report.

ALJs Hunt and Frankfurt rejoined the meeting at 11:17 and 11:20 a.m. respectively.

EXECUTIVE AND LEGAL AFFAIRS SECRETARY'S ACTIVITY REPORT

ELAS Noel discussed the following items from the ELAS Activity Report:

2006-07 & 2007-08 Budgets: Staff anticipates that its 2006-07 budget will be approved with no further augmentations or reductions. Staff will be preparing Budget Change Proposals (BCPs) in the 2007-08 budget to plan for the Commission's 50th anniversary celebration.

FEHC Website: Our two new Commissioners are now on our website. Staff's next goal is to add three additional items to our website: a guide on pregnancy disability and family care leave, a guide for unrepresented respondents, and copies of the Commission's precedential decisions. These will be added to the website by July 1.

Mediation, Adjudication and Settlement Conferences: Since the February 1, 2006, Commission meeting, the Department has issued 17 accusations. From February 1, 2006 through June 6, 2006, the Commission ALJs have presided or will have presided in 15 days of contested hearings, conducted 13 telephonic case management conferences, conducted 5 settlement conferences and mediation, and have handled 2 law and motion matters.

Changing Location for Upcoming Commission Meeting: ELAS Noel discussed a request by Fred Persily, former Executive Director of the California Association of Human Relations Commissions (HRC), for the FEHC to hold its next Commission meeting in Riverside. Persily stated that the City of Riverside has defunded its HRC after Riverside residents questioned the city's hiring practices and requested that the Riverside HRC investigate these allegations. Chairman Woolverton moved, Commissioner Freeman seconded, and the Commission unanimously voted to hold its August 29th meeting in Riverside. [06-23]

Commission Work Plan for 2006-2007 and beyond: ELAS Noel suggested that the Commission discuss a Commission future work plan to guide its work for the next year and to begin planning for the 50th anniversary of the Fair Employment and Housing Act. Chairman Woolverton directed staff to set up a separate telephonic Commission meeting for the last week of July to discuss a Commission work plan.

Customer Service Initiative: ALJ Frankfurt and ELAS Noel continue to work with State and Consumer Services Agency on its agency-wide “Customer Service Initiative” (CSI) to improve customer service in state government. Staff is focusing on improving the State’s “Labor and Employment” portal to make it more accessible and “user-friendly” to the public, more thorough, and more accurate.

ELAS Noel announced ALJ Frankfurt’s resignation from the Commission and that her last day of work will be July 31st. ELAS Noel stated that ALJ Frankfurt has been with the Commission for over 12 years. ELAS Noel praised Judge Frankfurt’s contributions to the Commission, particularly her perfect settlement record, her work shepherding Assembly Bill No. 2222 through the Legislature, and her mentorship of dozens of law student clerks. ELAS Noel and the Commissioners thanked Judge Frankfurt for her 12 years of service to the Commission and wished her well in her future endeavors.

New Administrative Law Judge/Commission Counsel: Staff has reviewed its specifications for an administrative law judge position and soon will post an announcement for two positions. We will also be posting a listing for Commission Counsel, which allows us to reach attorneys who might not qualify immediately to be ALJs. Posting both positions gives the Commission maximum flexibility in hiring. We encourage your ideas for recruitment venues.

Commissioner Sexual Harassment Training: ELAS Noel suggested and the Commissioners agreed to schedule harassment training and education for those Commissioners and staff who did not participate in its June 2005 training for Monday afternoon, August 28.

FEHC Public Records Act Policy: In compliance with an Executive Order from Governor Schwarzenegger, we have developed a new Public Records Act Policy to process efficiently and accurately requests for records from the public.

Outreach and Education: ELAS Noel referred the Commissioners to the Activity Report for recent Commission outreach and education.

Commissioner Confirmation: ELAS Noel reported that Commissioners Adams, Ng and St. Hilaire have all been confirmed by the State Senate. We offer our congratulations!

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING’S REPORT

Commissioners Freeman and Hockenhull introduced themselves to DFEH Director Suzanne Ambrose; they have previously spoken on the telephone. Ambrose in turn introduced DFEH’s Chief Deputy Director, Wanda Kirby to the Commission. Ambrose reported on Department news regarding staffing, budget and other issues.

The Governor’s original proposal to augment DFEH’s budget had been approved by both the Assembly and Senate. However, the Assembly augmented the proposal further, wanting the Department to create its own Mediation Unit. As a result, this new budget is pending approval. The Governor’s original proposal will help the Department in hiring additional staff, doing technology upgrades to automate issuing “right to sue” letters and scheduling, and for printing publications.

The Department has been doing mediations with voluntary mediators. The Department has traveled the state asking qualified mediators to volunteer to mediate cases pre-investigation. This program has been in place since January 2006. To date, 31 mediators have been trained through the Department's orientation program.

The Department has started an outreach program with the Agricultural Labor Relations Board (ALRB) and the Equal Employment Opportunity Commission (EEOC) to do outreach in the agricultural industry to train workers about sexual harassment.

The Department had a huge victory in a housing case involving a disabled San Francisco woman, Shirley Carper, seeking accessible parking in her apartment building. After trial, the Department settled the matter for \$1 million.

The Commission took a 3 minute recess at 11:55 a.m.

The Commission reconvened at 12:00 p.m.

HARASSMENT TRAINING REGULATIONS

The Commission began a discussion of revisions of the Harassment Training Regulations. Chairman Woolverton rescheduled further discussion and adoption of the revised Harassment Training Regulations to a June 20th Telephonic Meeting.

LEGISLATION

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission unanimously voted to sponsor legislation to amend the FEHA regarding administrative fines and direct that the funds go to the Department for outreach, education and training rather than to the State's General Fund. [06-24] The Commissioners directed ALJ Frankfurt to draft language for the bill and the Commissioners agreed that they would seek sponsors for the legislation.

Open Session ended at 2:00 p.m. and the Commission took a 4 minute recess.

PUBLIC FORUM – CIVIL RIGHTS ISSUES IN THE SAN JOAQUIN VALLEY

At 2:07 p.m. the Commission held a forum to discuss civil rights issues in the Fresno area and San Joaquin Valley.

Geraldine Reyes, DFEH Fresno Office. Reyes spoke about the types of DFEH complaints filed in the Fresno and Bakersfield District Offices and civil rights concerns in the San Joaquin Valley.

Jose Luis Barraza, Center for Independent Living. Barraza spoke on the continuing discrimination that persons with disability face in Fresno.

Bonnie Rusko, Center for Independent Living. Rusko spoke on the continuing discrimination that persons with disability face. Rusko also discussed the advisability of building uniform design homes, which are easily converted to homes accessible to persons with disabilities.

M.J. Borelli, Fair Housing Council of Central California. Borelli spoke on the “epidemic of housing discrimination” in the Fresno area, needed housing discrimination training for DFEH case investigators, and the harmful effect of anti-immigrant rhetoric on housing discrimination.

Melissa Barrios, California Rural Legal Assistance. Barrios spoke on the need for more legal outreach with rural populations, language access difficulties for immigrant communities, the increase of sexual orientation cases, and creating a “no-fault” consultation program where a government agency audits an employer’s compliance with its regulations, giving the employer a certain amount of time to come into compliance without penalties assessed.

Monica Chavez, California Rural Legal Assistance. Chavez spoke on the need for more outreach with rural populations, the negative effect of “immigrant bashing”, requiring posting and training for employees, and creating a “no-fault” consultation program.

Brenda Budke, Central California Employers’ Round Table. Budke spoke on the need to focus on preventative training for employers rather than compliance and offered suggestions for the harassment training regulations.

Jess O.F. Negrete, Central California Legal Services. Negrete spoke on the conditions of sheepherders and what it portends for a proposed guest worker program, the lack of affordable housing in Fresno, and poverty in Fresno.

ADJOURNMENT

The Commission adjourned its meeting and forum at 4:05 p.m.

Date: June 6, 2006

GEORGE WOOLVERTON
Chairman

**REPORT OF TRANSACTIONS
OF THE 461st COMMISSION MEETING**

**June 6, 2006
Fresno, California**

THE COMMISSION AT THIS MEETING TOOK THE FOLLOWING ACTIONS:

- 06-15 Approved the meeting's agenda.
- 06-16 Approved the Minutes and Transactions of the 460th meeting as submitted.
- 06-17 Voted 5:0 to designate the decision in DFEH v. Capitol Hills Arco AM/PM (Johnson) as precedential.
- 06-18 Voted 5:0 to adopt the decision in DFEH v. St. Julius Lewis (Maxwell & Johnson.)
- 06-19 Voted 4:1 to adopt the decision in DFEH v. CATERON, et al (Benjamin).
Commissioner Freeman dissented.
- 06-20 Voted 5:0 to adopt the proposed decision in DFEH v. Stephen Fields (Langille).
- 06-21 Voted 5:0 to adopt the proposed decision in DFEH v. Prunty's New Beginnings (Henson/Project Sentinel).
- 06-22 Voted 5:0 to end Closed Session and enter Open Session.
- 06-23 Voted 5:0 to hold the next Commission meeting in Riverside.
- 06-24 Voted 5:0 to amend the FEHA regarding administrative fines and direct that the funds go to the Department for outreach, education and training rather than to the State's General Fund.

Prepared By

Loc D. Tra
Clerk of the Commission